v. *Jaques,* 129 Mass. 286, the court holding that "a power to sell imports a sale 'out and out' and will not authorize a mortgage, unless something in the will shows that a mortgage was within the intention of the testator." See also *Bloomer* v. *Waldron,* 3 Hill 361. Opposed to the general rule is *Zane* v. *Kennedy,* 73 Pa. 182, where the court holds that an "absolute and unrestricted power to sell includes a power to mortgage," on the theory that a mortgage is a conditional sale. The rule is not without its exception, for in *Ball* v. *Harris,* 4 Myl. & Cra. 264, it was said that it had been settled since the decision of *Mills* v. *Banks,* 3 P. Wms. 9 in 1724 that where an estate is devised with a charge imposed, or a power to raise a sum of money, power to sell includes a power to mortgage. In *Loebenthal* v. *Raleigh,* 36 N. J. Eq. 169, a mortgage was allowed to be made where the power to sell was for the purpose of raising a sum sufficient to pay debts, and it appeared to the court that the "purpose could be answered better by mortgage than by sale." Where one is the devisee of a life estate and has the power to sell for "support and maintenance," many courts are inclined to modify the general rule and under the power of sale to permit a mortgage. In *Hamilton* v. *Hamilton,* 149 Ia. 321, 128 N. W. 380, the court says that a power to sell given to an agent, trustee, or attorney, which power is strictly construed, and generally held not to include a power to mortgage, is to be distinguished from a testamentary power, given not for the benefit and profit of the donor, but in furtherance of some benefit intended to be conferred on the donee; and unless the intention clearly appears otherwise, the authority to mortgage for the purpose expressed in the writing will be inferred. This modification has also been allowed by the courts in the cases of *Kent* v. *Morrison,* 153 Mass. 137, 26 N. E. 427, 10 L. R. A. 756; *McCreary* v. *Bomberger,* 151 Pa. 323, 24 Atl. 1066; *Swarthouth* v. *Ranier,* 143 N. Y. 499, 38 N. E. 726. See also 20 HARV. L. REV. 568, and 15 MICH. L. REV. 331.

WILLS—SOLDIERS AND SEAMEN.—The privilege provided by §11 of the Wills Act of 1837, that any soldier *being in actual military service* or mariner or seaman *being at sea* may dispose of his personal estate as he might have done before the passing of the act, was claimed for each of two unattested papers offered for probate. In the first case the deceased had volunteered and had been ordered to report for duty in the Naval Sick Berth Service. The writing was executed after receiving orders to embark but before he had actually joined the ship. *Held,* that the papers were inadmissable for probate, for, although the deceased was a seaman, he had not yet been at sea. *Estate of Anderson,* [1916] Pro. 49, 85 L. J. Pro. 21.

In the second case, a female nurse had been employed on a hospital ship under engagement with the War Office. When the writing was executed she was on shore leave but had received orders to embark. *Held,* that the paper was entitled to probate as the will of a soldier "being in actual military service." *Estate of Stanley,* [1916] Pro. 192, 85 L. J. Pro. 222.

The privilege of having an informal writing probated as a will of personalty has been interpreted so as to be available not only to "mariners and seamen," both common seamen and officers, (*Goods of Hays,* 2 Curt. Eccl.

Rep. 338), whether engaged in the merchant marine or naval service, (*Hubbard* v. *Hubbard,* 8 N. Y. 196), but also to anyone employed on the ship, for example, the ship cook, (*Ex Parte Thompson,* 4 Bradf. 154), a female typist. (*In the Goods of Hale,* [1915] 2 Ir. Rep. 362), and a female nurse, (*Estate of Stanley,* supra); but not to one a passenger when the writing was executed, though by profession a mariner. (*Warren* v. *Harding,* 2 R. I. 133). A seaman is "at sea" within the requirements of the statute, while in the course of the voyage, though the vessel may actually be in a port and the deceased on shore. *Lay's Goods,* 2 Curt. Eccl. Rep. 375. A vessel lying in the Thames river preparatory to setting sail is "at sea." *Goods of Patterson,* 79 L. T. N. S. 123; but where the ship remained in port for fifteen days after a sailor had signed articles, a writing executed during that time was not privileged since the deceased had not been "at sea." *Corby's Goods,* 29 Eng. L. & Eq. Rep. 604. Nor was a vessel "at sea" when lying on the Mississippi river above the ebb and flow of the tide. *Giwn's Will,* 1 Tucker 44. Where a soldier who had just entered the barracks attempted to make a will, it was held good because he had taken a step which brought him within the terms of the statute, even though he had not received orders to embark. *Goods of Hiscock,* [1901] Pro. 78, 84 L. T. N. S. 61. That orders for mobilization, without orders to embark, constituted a force *in expeditione,* was held in *Gattward* v. *Knee,* [1902] Pro. 99, 86 L. T. N. S. 119, 4 B. R. C. 895. A paper written by a soldier in camp before his company was mustered into the service of the United States, was held not entitled to probate in *Van Deuzer* v. *Gordon,* 39 Vt. 111, and *Pierce* v. *Pierce,* 46 Ind. 86. Though at the time he had facilities for making a formal will, being in a hospital in the city of Washington, a soldier was in "actual military service" who had been fighting at the front, but was now unable to proceed with his company which was still in active service. *Gould* v. *Stafford's Estate,* 39 Vt. 498. The distinction which seems to be recognized in this country is as stated in *In re Smith,* 6 Phila. 104, where a writing made by a soldier while home on a furlough, was offered for probate, and the court said, "The term 'soldiers in actual military services' includes those engaged in the active duties of the field, whether on the march, in temporary camp, the battle, siege, or bivouac, but can never apply to the soldier who is in regular quarters or at his customary home on leave of absence."